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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NANCY JEAN HOLT, derivatively
on behalf of VALUECLICK, INC.

Plaintiff,

vs.

DAVID S. BUZBY, JAMES A.
CROUTHAMEL, JOHN
GIULIANI, MARTIN HART,
JAMES R. PETERS, JEFFREY F.
RAYPORT, BRIAN A. SMITH and
JAMES ZARLEY,

Defendants,

and

VALUECLICK, INC.,

Nominal Defendant.

**VERIFIED COMPLAINT FOR
BREACH OF FIDUCIARY DUTY**

JURY TRIAL DEMANDED

VERIFIED COMPLAINT FOR BREACH OF FIDUCIARY DUTY

INTRODUCTION

1. This is a verified shareholder derivative action brought on behalf of Nominal Defendant ValueClick, Inc. ("ValueClick" or the "Company"). The relevant period is from February 14, 2013 through the present (the "Relevant Period"). This action is brought against certain of ValueClick's current officers and directors for breaches of fiduciary duties and unjust enrichment.

2. Specifically, throughout the Relevant Period, Defendants (defined below) breached their fiduciary duties owed to ValueClick and its shareholders by disseminating false and misleading statements to the investing public.

3. Defendants ignored clear and obvious red flags of business process and managerial misconduct. The true facts, which were known by the Defendants but concealed from the investing public during much of the Relevant Period were as follows:

(a) that ValueClick had grown its revenues and profits over the past several quarters primarily through acquiring revenue streams and was not experiencing organic growth during the Relevant Period;

(b) that ValueClick was not effectively integrating the Dotomi and Greystripe acquisitions, and as such, revenues and profits were not growing, exponentially or otherwise, in its Media segment;

(c) that endemic sales execution problems in the Media segment were reducing sales;

(d) that persistent operational weakness in ValueClick's European operations and sales were weighing down revenue growth;

(e) that disruptions in the CJ subsidiary were driving down Affiliate Marketing revenues and preventing ValueClick from taking advantage of Google's departure from the Affiliate Marketing market; and

1 (f) that the Note Receivable (defined below) was materially
2 impaired and, therefore, ValueClick's assets and income were being materially
3 overstated and its costs were being materially understated.

4 4. As a result of Defendants' false statements, ValueClick's stock traded
5 at artificially inflated levels during much of the Relevant Period. However, after
6 the above revelations seeped into the market, the price of the Company's common
7 shares declined substantially. The price of ValueClick common stock plummeted
8 *more than 33%* from that level to close at \$21.37 per share on August 2, 2013,
9 *erasing more than \$826 million in market capitalization.*

10 5. Defendants' conduct was extremely reckless, and has resulted in
11 substantial damages to ValueClick and its stockholders, while management and
12 the Board have continued to reap undeserved compensation. Defendants have also
13 exposed the Company to civil liability as a result of a number of securities fraud
14 class action lawsuits (the "Securities Class Action") pending against the Company
15 and certain of its senior executive officers. The damages to the Company include,
16 among other things, investigatory and litigation costs, including costs for
17 defending the Company in the Securities Class Action. The Company is also
18 exposed to millions of dollars of liability for alleged securities law violations.

19 **JURISDICTION AND VENUE**

20 6. This Court has jurisdiction over the subject matter of this action
21 pursuant to 28 U.S.C. §1332(a)(2) in that Plaintiff and Defendants are citizens of
22 different states and the amount in controversy exceeds \$75,000.00 exclusive of
23 interest and costs.

24 7. This action is not a collusive one designed to confer jurisdiction upon
25 a court of the United States that it would not otherwise have.

26 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)
27 because a substantial portion of transactions and wrongs complained of herein
28 occurred in this District. Further, Defendants participated in board of director

1 meetings or maintain executive offices in this District and have received
2 substantial compensation in this District by engaging in numerous activities and
3 conducting business in this District. Further, ValueClick maintains its principal
4 place of business in this District.

5 **PARTIES**

6 9. Plaintiff Nancy Jean Holt is a current shareholder of ValueClick and
7 has continuously held ValueClick stock during the Relevant Period and through
8 the present. Plaintiff is a citizen of Texas.

9 10. Nominal Defendant ValueClick is an online advertising company,
10 which provides online advertising campaigns and programs for advertisers and
11 advertising agency customers in the United States and internationally. ValueClick
12 is incorporated in the State of Delaware and headquartered in Westlake Village,
13 California. ValueClick essentially has no operations in Delaware and no
14 employees in Delaware.

15 11. Defendant David S. Buzby (“Buzby”) has been a director of
16 ValueClick since May 1999. Buzby is a member of the Company’s Audit,
17 Nominating and Governance and Compensation Committees. Buzby is a citizen
18 of California.

19 12. Defendant James A. Crouthamel (“Crouthamel”) has been a director
20 of ValueClick since July 2007. Crouthamel is a citizen of Pennsylvania.

21 13. Defendant John Giuliani (“Giuliani”) joined ValueClick as the
22 President of the Company's Dotomi division and a director of the Company's
23 Board in August 2011. Giuliani was named the Company's chief operating officer
24 in April 2012 and then President and Chief Executive Officer (“CEO”) in
25 December 2012. From December 2005 to August 2011, Giuliani served as the
26 Chairman of the Board and CEO of Dotomi prior to ValueClick's acquisition of
27 Dotomi. Giuliani is a citizen of Nevada.

1 14. Defendant Martin Hart (“Hart”) has served as a director since March
2 1999. Hart is a member of the Nominating and Governance Committee and is
3 Chairman of the Compensation Committee. Hart is a citizen of Arizona.

4 15. Defendant James R. Peters (“Peters”) has been a director of the
5 Company since July 2007. Peters is the Chairman of the Audit Committee. Peters
6 is a citizen of Mississippi.

7 16. Defendant Jeffrey F. Rayport (“Rayport”) has served as a director of
8 the Company since May 2002. Rayport is a member of the Audit Committee and
9 Chairman of the Nominating and Governance Committee. Rayport is a citizen of
10 Massachusetts.

11 17. Defendant Brian A. Smith (“Smith”) has served as a director since
12 August 2013. Smith is a citizen of Arizona.

13 18. Defendant James Zarley (“Zarley”) serves as the Chairman of the
14 Board. From his arrival in 1999 until May 2007, Zarley served as Chairman and
15 CEO of ValueClick. During the period from May 2007 through May 2010, Zarley
16 served as Executive Chairman of the Company. From May 2010 to December
17 2012, Zarley served as the Company's CEO. From December 2012 to March 2013,
18 Zarley served as Executive Chairman of the Board and assumed the role of non-
19 executive Chairman of the Board beginning in March 2013 in connection with his
20 retirement from a full-time position with the Company. Zarley is a citizen of
21 Nevada.

22 19. Defendants Buzby, Crouthamel, Giuliani, Hart, Peters, Rayport,
23 Smith and Zarley are collectively referred to herein as the “Defendants.”

24 **DEFENDANTS’ DUTIES**

25 20. By reason of their positions as officers and/or directors, and
26 fiduciaries of ValueClick and because of their ability to control the business and
27 corporate affairs of ValueClick, Defendants owed ValueClick and its shareholders
28 fiduciary obligations of good faith, loyalty, and candor, and were and are required

1 to use their utmost ability to control and manage ValueClick in a fair, just, honest,
2 and equitable manner. Defendants were and are required to act in furtherance of
3 the best interests of ValueClick and its shareholders so as to benefit all
4 shareholders equally and not in furtherance of their personal interests or benefit.
5 Each director and officer of the Company owed and owes to ValueClick and its
6 shareholders the fiduciary duty to exercise good faith and diligence in the
7 administration of the affairs of the Company and in the use and preservation of its
8 property and assets, and the highest obligations of fair dealing.

9 21. Defendants, because of their positions of control and authority as
10 directors and/or officers of ValueClick, were able to and did, directly and/or
11 indirectly, exercise control over the wrongful acts complained of herein. Because
12 of their advisory, executive, managerial, and directorial positions with ValueClick,
13 each of the Defendants had knowledge of material non-public information
14 regarding the Company.

15 22. To discharge their duties, the officers and directors of ValueClick
16 were required to exercise reasonable and prudent supervision over the
17 management, policies, practices and controls of the Company. By virtue of such
18 duties, the officers and directors of ValueClick were required to, among other
19 things:

20 (a) Exercise good faith to ensure that the affairs of the Company
21 were conducted in an efficient, business-like manner so as to make it possible to
22 provide the highest quality performance of the Company's business;

23 (b) Exercise good faith to ensure that the Company was operated
24 in a diligent, honest and prudent manner and complied with all applicable federal
25 and state laws, rules, regulations and requirements; and

26 (c) When put on notice of problems with the Company's business
27 practices and operations, exercise good faith in taking appropriate action to correct
28 the misconduct and prevent its recurrence.

23. Additionally, according to ValueClick’s Audit Committee Charter, the purpose of the Audit Committee is, among other things, to represent and assist the Board in fulfilling its oversight responsibilities regarding the Company’s financial reporting process, internal controls over financial reporting and the Company’s compliance with legal and regulatory requirements.

BACKGROUND

24. ValueClick is an online advertising company which provides online advertising campaigns and programs for advertisers and advertising agency customers in the United States and internationally. The Company's customers include advertisers, advertising agencies and traffic distribution partners.

25. In March 2008, ValueClick paid a record \$2.9 million fine to settle Federal Trade Commission (“FTC”) charges that it deceived consumers with offers of prizes to complete surveys. The FTC charged ValueClick subsidiary Hi-Speed Media with using deceptive e-mails, banner ads and pop-ups to drive consumers to its websites. The e-mails and online ads claimed that consumers were eligible for free gifts, such as laptops and iPods, and included come-ons such as “Free PS3 for survey.” The FTC action alleged that consumers lured to websites by these promises were led through “a maze of expensive and burdensome third-party offers which they were required to ‘participate in’ at their own expense in order to receive the promised ‘free’ merchandise.”

26. On February 1, 2010, the Company completed the sale of its promotional lead generation marketing business. The proceeds from the sale consisted of a \$45 million (face amount) five-year note receivable bearing interest at the rate of 5% (the “Note Receivable”). The estimated fair value of the Note Receivable was \$32.8 million on the date of sale and it called for monthly payments amortized over a ten- year period and a balloon payment at the end of the fifth year. The sale resulted in ValueClick reporting a pre-tax gain of \$1.1 million, and a \$10.0 million gain net of income taxes due to an \$8.9 million tax

1 benefit related to tax deductible goodwill that was realized upon the sale of the
2 business.

3 27. In April 2011, the Company acquired Greystripe, Inc. (“Greystripe”),
4 a large brand-focused mobile advertising network, for \$75 million.

5 28. In August 2011, the Company acquired Dotomi, Inc. (“Dotomi”), a
6 provider of data-driven, so-called intelligent display media for major retailers, for
7 \$295 million. At the time of the acquisition, Defendant Giuliani was CEO of
8 Dotomi which was based in Chicago and had 160 employees.

9 29. Both Dotomi and Greystripe operate within ValueClick’s Media
10 segment. Essentially, Dotomi tracks Internet users’ personal preferences and
11 targets advertising to them based on their personal preferences (using “cookies”
12 implanted on Internet users’ personal computers) whereas Greystripe serves
13 advertising to users of smartphones and other touch-screen devices across all
14 major mobile platforms (which do not accept “cookies”).

15 30. These acquisitions enabled ValueClick to report that annual revenues
16 grew over 25% and that earnings grew over 30% during the past three years. By
17 the start of the Relevant Period, ValueClick was promising that the full integration
18 of these companies was progressing on track and that operating them together
19 would allow ValueClick to grow revenues and profits exponentially by allowing
20 ValueClick to track Internet users’ preferences across all platforms (PC and
21 mobile) and to sell so- called intelligent targeted advertising in a unified fashion
22 across all platforms.

23 **DEFENDANTS' FALSE AND MISLEADING STATEMENTS**
24 **ISSUED DURING THE RELEVANT PERIOD**

25 31. On the evening of February 13, 2013, after the close of trading,
26 Defendants caused the Company to issue a press release announcing its financial
27 results for its fourth quarter and fiscal year ended December 31, 2012 (the first full
28 year following the Dotomi/Greystripe acquisitions) and its first quarter 2013

1 guidance (ending March 31, 2013). The press release stated that “[r]evenue met
 2 the high-end of its guidance range, while Adjusted-EBITDA and non-GAAP
 3 diluted net income per common share exceeded the high-end of their respective
 4 guidance ranges.” ValueClick reported that its fourth quarter 2013 sales rose 14%
 5 over the prior year to \$199.6 million, exceeding the \$198.2 million the analyst
 6 community had been led to expect. The Company also reported fourth quarter
 7 2013 non-GAAP diluted net income of \$0.56 per share, up 22% from the prior
 8 year’s fourth quarter and exceeding the \$0.52 per share that the analyst
 9 community had been led to expect. For the Company’s first quarter 2013,
 10 ValueClick said it was on track to achieve revenues of \$165 million to \$168
 11 million and non-GAAP diluted net income per share of \$0.39 to \$0.41, above the
 12 \$0.38 per share analysts had been led to expect.

13 32. The press release quoted defendant Giuliani stating, in pertinent part:
 14 “We are seeing the *early results* of our initiatives to elevate our conversations
 15 with advertisers to become a more strategic and persistent marketing partner,
 16 while also *executing on our goals of strong organic growth and profitability*,”
 17 and that ValueClick then “expect[ed] 2013 to be a *watershed year*.”

18 33. During the conference call held with investors later on the evening of
 19 February 13, 2013, Defendant Giuliani, on behalf of ValueClick, made more
 20 positive comments about the strength of its business and product offerings, and
 21 stated that its integration of Dotomi’s and Greystripe’s development and sales
 22 teams was proceeding on track. Specifically, Defendant Giuliani emphasized that
 23 he then “personally believe[d] [defendants had] made a good capital decision on
 24 behalf of [ValueClick’s] shareholders,” and that the Company had “embarked on a
 25 strategic initiative to integrate [the Company’s] businesses that [would] help
 26 [them] *accelerate [ValueClick’s] organic growth rate*.”
 27
 28

1 34. In response to this news, the price of ValueClick stock spiked when
2 trading resumed on February 14, 2013 more than seven times the average daily
3 volume over the preceding ten trading days.

4 35. Shortly thereafter, Defendants Zarley and Giuliani immediately
5 cashed in by selling their personally held ValueClick stock. Less than a week
6 later, on February 20, 2013, Defendant Zarley sold 196,770 shares generating
7 proceeds of more than \$5.3 million and Defendant Giuliani sold 17,161 shares on
8 February 22 and March 1, 2013 generating proceeds of \$463,680. By March 15,
9 2013, Defendants Crouthamel and Rayport each sold 30,000 shares, generating
10 proceeds of \$846,960 and \$ 846,664.59, respectively. Defendant Hart sold 60,000
11 shares generating proceeds of approximately \$1,690,200.

12 36. On February 27, 2013, ValueClick filed its Annual Report on Form
13 10-K with the SEC. The Form 10-K was signed by Defendants Giuliani, Buzby,
14 Hart, Rayport, Crouthamel and Peters and also certified as to its accuracy by
15 Defendant Giuliani. It stated that the Company had received a \$4.2 million
16 principal payment on the Note Receivable and that “[t]he carrying amount of the
17 note receivable at December 31, 2012 [was] \$29.4 million.” The Form 10-K also
18 stated in pertinent part that “[t]he Company records this note receivable at
19 amortized cost and recognizes interest income as earned,” *“[t]he Company*
20 *monitors the financial condition of its debtor by reviewing quarterly financial*
21 *statements of the debtor and the debtor’s ability to meet its regularly scheduled*
22 *payments,” “[f]or the year ended and as of December 31, 2012, there have been*
23 *no indicators of possible credit loss” and “[a]s such, the Company has not*
24 *recorded any allowance for credit losses associated with this note receivable,”*
25 and that *“[t]hrough the Company’s review of the buyer’s financial statements*
26 *and its history of on-time payments, the Company determined that as of*
27 *December 31, 2012 and 2011, an allowance for credit loss was not required.”*
28

37. On May 7, 2013, after the close of trading, ValueClick reported first quarter 2013 financial results for the quarter ended March 31, 2013. The results were mixed. Revenue increased 13% to \$165.4 million, but that fell short what analysts had been led to expect. Specifically, Media revenue rose to \$96.3 million from \$80.7 million, revenue from Affiliate Marketing increased to \$38.3 million from \$37.1 million, and revenue from Owned & Operated Websites grew to \$31 million from \$28.7 million. Meanwhile, ValueClick reported adjusted earnings of \$0.42 per share, which handily beat the Company's own \$0.39 to \$0.41 per share guidance on February 13, 2013 and the \$0.39 per share projections analysts had been led to expect. However, ValueClick only forecast second quarter adjusted earnings of between \$0.38 and \$0.40 per share on revenues in a range of \$164 million to \$175.3 million, less than the earnings of \$0.41 per share on revenues of \$175.3 million the analyst community had been led to expect in the quarter ending June 30, 2013.

38. Defendant Giuliani's statements in the May 7, 2013 press release were both positive, with him now emphasizing that: "2013 [was] a transformational year for ValueClick, as *[it] raise[d] [its] long-term growth potential by integrating [its] multiple offerings and leveraging [its] core strengths in data, personalization and cross-device targeting*," while also warning that, "short-term disruptions [would] occur as [the Company] integrate[d] multiple offerings and geographies," but emphatically ensuring that: "***We are confident that our strategic initiatives will best serve the long-term interests of our advertisers and shareholders.***"

39. In the press release, Defendant Giuliani also emphasized that "[i]n addition to integration initiatives, [ValueClick was] focused . . . on capitalizing on the *unprecedented short-term opportunity* in affiliate marketing" brought about by "Google's recent decision to exit this market," which he characterized as "***a seismic shift in the competitive landscape***," stating ValueClick was then

1 “prioritizing resources to take *full advantage*,” that “[t]he affiliate marketing
2 industry and its customers [were] at an inflection point, and [that] ValueClick
3 [stood] alone as the company with affiliate marketing at its core.”

4 40. On May 9, 2013, ValueClick filed its quarterly financial report on
5 Form 10-Q with the SEC. The Form 10-Q stated that the Company had received a
6 \$1 million interest payment on the Note Receivable, that “[t]he carrying amount of
7 the [N]ote [R]eivable at March 31, 2013 [was] \$29.0 million,” and that
8 “*[t]hrough the Company’s review of the buyer’s financial statements and its
9 history of on-time payments, the Company determined that as of March 31, 2013
10 and December 31, 2012, an allowance for credit loss was not required.*” The
11 Form 10-Q was signed and certified by Defendant Giuliani.

12 41. The statements referenced above were each materially false and
13 misleading when made as they failed to disclose and misrepresented the following
14 adverse facts which were known by Defendants or recklessly disregarded by them:

15 (a) that ValueClick had grown its revenues and profits over the
16 past several quarters primarily through acquiring revenue streams and was not
17 experiencing organic growth during the Relevant Period;

18 (b) that ValueClick was not effectively integrating the Dotomi and
19 Greystripe acquisitions and as such revenues and profits were not growing,
20 exponentially or otherwise, in its Media segment;

21 (c) that endemic sales execution problems in the Media segment
22 were reducing sales;

23 (d) that persistent operational weakness in ValueClick’s European
24 operations and sales were weighing down revenue growth;

25 (e) that disruptions in the CJ subsidiary were driving down
26 Affiliate Marketing revenues and preventing ValueClick from taking advantage of
27 Google’s departure from the Affiliate Marketing market; and
28

1 (f) that the Note Receivable was materially impaired and,
2 therefore, ValueClick's assets and income were being materially overstated and its
3 costs were being materially understated.

4 42. On August 1, 2013, after the close of trading, Defendants caused the
5 Company to issue a press release announcing its second quarter 2013 financial
6 results for the quarter ended June 30, 2013, and issuing third quarter 2013
7 guidance for the quarter ending September 30, 2013.

8 43. Blaming "more weakness than . . . anticipated" in Media segment
9 sales in the second quarter, instead of the high single-digit sales growth defendants
10 stated ValueClick was then on track to deliver on May 7, 2013, *almost halfway*
11 *through the quarter*, ValueClick reported flat Media sales in the second quarter
12 2013. Instead of the adjusted earnings of between \$0.38 and \$0.40 per share on
13 revenues in the range of \$164 million to \$175.3 million ValueClick had stated it
14 was on track to achieve on May 7, 2013, ValueClick reported adjusted earnings of
15 \$0.39 per share on revenues of just \$159.8 million. Additionally blaming "overall
16 sales execution" issues that reduced Media sales in the quarter, Defendant Giuliani
17 conceded on the conference call held that night that ValueClick "[had not] hired
18 fast enough; [had not] deployed new folks quick enough, and [that] there [had]
19 been an unevenness about how [ValueClick had] sold [its] product portfolio."

20 44. Worse, the Company reported a 42% decline in net income — which
21 declined to \$11.9 million, or \$0.15 per share in the second quarter 2013, from
22 \$20.3 million, or \$0.25 per share in the second quarter 2012, due to a \$22.6
23 million impairment charge ValueClick had to take on the Note Receivable — *or*
24 *approximately 80% of the value of the Note Receivable*. According to the press
25 release, the Company accepted just \$5.5 million on the \$28.1 million note,
26 "negatively impact[ing] second quarter GAAP and non-GAAP net income per
27 diluted common share by approximately \$0.18," *or more than half of what the*
28

1 *Company otherwise would have reported in net income but for the impairment*
2 *charge.*

3 45. Warning that Media segment sales would remain muted in the third
4 quarter 2013, ValueClick also stated that it was now projecting adjusted profits
5 per share of just \$0.39 to \$0.40 per share on revenues of only \$164 million to \$168
6 million in the third quarter of 2013, whereas bullish statements Defendants
7 allowed to be disseminated had led analysts to expect profits of \$0.43 per share on
8 revenues of \$180 million in the quarter.

9 46. On this news, the price of ValueClick common stock plummeted
10 *more than 33%* from that level to close at \$21.37 per share on August 2, 2013,
11 *erasing more than \$826 million in market capitalization.*

12 47. As a result of Defendants' false statements, ValueClick stock traded
13 at artificially inflated levels during the Relevant Period. Not surprisingly, multiple
14 securities class actions lawsuits have been filed against the Company and
15 Defendant Giuliani for alleged violations of federal securities laws.

16 **DERIVATIVE AND DEMAND FUTILITY**
17 **ALLEGATIONS FOR THE BOARD OF VALUECLICK**

18 48. Plaintiff brings this action derivatively in the right and for the benefit
19 of ValueClick to redress injuries suffered and to be suffered by ValueClick as a
20 result of the breaches of fiduciary duty by the Defendants.

21 49. Plaintiff will adequately and fairly represent the interests of
22 ValueClick and its shareholders in enforcing and prosecuting its rights.

23 50. As a result of the facts set forth herein, Plaintiff has not made a
24 demand on the ValueClick Board of Directors to institute this action against the
25 Defendants. Such demand would be a futile and useless act because the Board is
26 incapable of making an independent and disinterested decision to institute and
27 vigorously prosecute this action.

1 51. Defendants who are currently the members of the ValueClick's Board
2 are Defendants Buzby, Crouthamel, Giuliani, Hart, Peters, Rayport, Smith and
3 Zarley (the "Director Defendants").

4 **Defendants Giuliani, Zarley, Crouthamel, Rayport and Hart Each Profited**
5 **Through Illegal Insider Trading**

6 52. During the Relevant Period Defendants Giuliani, Zarley, Crouthamel,
7 Rayport and Hart each sold thousands of shares of their personally held
8 ValueClick stock while in possession of the adverse non-public information
9 concerning the Company alleged herein.

10 53. On February 20, 2013, Defendant Zarley sold 196,770 shares,
11 generating proceeds of more than \$5.3 million and Defendant Giuliani sold 17,161
12 shares on February 22 and March 1, 2013 generating proceeds of \$463,680. By
13 March 15, 2013, Defendants Crouthamel and Rayport each sold 30,000 shares,
14 generating proceeds of \$846,960 and \$846,664.59, respectively. Defendant Hart
15 sold 60,000 shares, generating proceeds of approximately \$1,690,200.

16 54. Defendants Zarley, Giuliani, Crouthamel, Rayport and Hart are
17 directly interested in a demand due to their receipt of material, personal financial
18 benefits from challenged insider trading transactions which were not shared with
19 ValueClick shareholders. Accordingly, demand upon them is futile.

20 **The Members of the Board of Directors Lack Independence**

21 **Defendant Giuliani Lacks Independence**

22 55. Defendant Giuliani serves as the Company's CEO, pursuant to which
23 he has received and continues to receive substantial monetary compensation and
24 other benefits. For instance Giuliani received compensation of \$12,679,900
25 million in 2012. Because of Giuliani's employment with the Company he is not
26 considered an independent director. ValueClick has disclosed in its SEC filings
27 that Giuliani is not considered -- under the listing standards of the NASDAQ
28 Global Market and rules promulgated by the SEC -- an independent director.

1 Thus, Defendant Giuliani is incapable of impartially considering a demand to
2 commence and vigorously prosecute this action.

3 **Defendant Zarley Lacks Independence**

4 56. Defendant Zarley is the Company's former CEO pursuant to which
5 he received substantial monetary compensation and other benefits. Because of
6 Zarley's previous employment with the Company he is not considered an
7 independent director. ValueClick has disclosed in its SEC filings that Zarley is not
8 considered -- under the listing standards of the NASDAQ Global Market and rules
9 promulgated by the SEC -- an independent director. Thus, Defendant Zarley is
10 incapable of impartially considering a demand to commence and vigorously
11 prosecute this action.

12 **Defendant Hart Lacks Independence From Giuliani**

13 57. Defendant Hart is a longtime director of ValueClick and colleague of
14 Giuliani. Hart has served as a director of ValueClick for approximately fourteen
15 years, since 1999. Thus, Defendant Hart is incapable of impartially considering a
16 demand to commence and vigorously prosecute this action against Giuliani.

17 **Likelihood of Substantial Liability of the Audit Committee Defendants**

18 58. Buzby, Peters and Rayport each serve on the Audit Committee of
19 ValueClick's Board. As such, they will take no action against one another or the
20 other members of the Board of Directors or the other Defendants because each
21 member of this Committee breached important specific duties as Audit Committee
22 members. According to ValueClick's SEC filings and Audit Committee Charter
23 the purpose of the Audit Committee is, among other things, to monitor and
24 oversee the quality and integrity of the Company's accounting process and system
25 of internal controls.

26 59. Defendants Buzby, Peters and Rayport ignored clear and obvious red
27 flags and in doing so breached their fiduciary duties of due care, loyalty, and good
28 faith. Specifically, they were aware that ValueClick had grown its revenues and

profits over the past several quarters primarily through acquiring revenue streams and was not experiencing organic growth during the Relevant Period; that ValueClick was not effectively integrating the Dotomi and Greystripe acquisitions and, as such, revenues and profits were not growing, exponentially or otherwise, in its Media segment; that endemic sales execution problems in the Media segment were reducing sales; that persistent operational weakness in ValueClick's European operations and sales were weighing down revenue growth; that disruptions in the CJ subsidiary were driving down Affiliate Marketing revenues and preventing ValueClick from taking advantage of Google's departure from the Affiliate Marketing market; and that the Note Receivable was materially impaired and, therefore, ValueClick's assets and income were being materially overstated and its costs were being materially understated.

60. The Audit Committee possesses and possessed essentially unfettered power to the Company's records and can request additional information or meet with management as it deems necessary to fulfill its responsibilities.

61. As a result of the Audit Committee's failures, Defendants Buzby, Peters and Rayport face a substantial likelihood of liability for breaches of fiduciary duties, making any demand upon them futile.

Additional Likelihood of Substantial Liability of the Compensation Committee Members

62. Defendants Buzby and Hart were at times relevant hereto members of the Company's Compensation Committee. Pursuant to its Charter, the Compensation Committee is and was responsible for, among other things, reviewing and approving the compensation and incentive arrangements for the Company's CEO and Executive Chairman.

63. The Compensation Committee permitted the continued compensation payments to senior executives, like Defendant Giuliani, based on misleading

1 statements and grossly inflated financial results, and in the process, committed
2 corporate waste.

3 **Additional Likelihood of Substantial Liability of the Board of Directors**

4 64. The Board members of ValueClick approved and/or permitted the
5 wrongs alleged herein to have occurred and participated in efforts to conceal or
6 disguise these wrongs from ValueClick shareholders or recklessly disregarded the
7 wrongs complained herein, and are therefore not disinterested parties. Each of the
8 Defendants exhibited a systematic failure to fulfill their fiduciary duties, which
9 could not have been an exercise of good faith business judgment and amounted to
10 extreme recklessness and bad faith.

11 65. In order to bring this suit, the Board members of ValueClick would
12 be forced to sue themselves and persons with whom they have extensive business
13 and personal entanglements, which they will not do, thereby excusing demand.

14 66. The acts complained of constitute violations of the fiduciary duties
15 owed by ValueClick's officers and directors and these acts are incapable of
16 ratification.

17 67. ValueClick has been, and will continue to be subjected to lawsuits for
18 the actions described herein, including securities fraud class action lawsuits, yet
19 the Defendants and current Board have not filed any lawsuits against themselves
20 or others who were responsible for that wrongful conduct to attempt to recover for
21 ValueClick any part of the damages the Company has suffered and will continue
22 to suffer.

23 68. The actions of the Directors and the relationships between and among
24 the Defendants as described above have impaired the Board's ability to validly
25 exercise its business judgment and have rendered it incapable of reaching an
26 independent decision as to whether to accept Plaintiff's demands.

27 69. Any suit by the directors of ValueClick to remedy these wrongs
28 would likely expose the Defendants and ValueClick to further violations of

1 securities laws which could result in additional civil actions being filed against
2 one or more of the Board members. In light of this, they are conflicted in making
3 any supposedly independent determination as to whether to sue themselves.

4 70. Indeed, ValueClick has already expended and will continue to expend
5 significant sums of money as a result of the illegal and improper actions described
6 above. Such expenditures will include, but are not limited to:

7 (a) Costs incurred to carry out internal investigations, including
8 legal fees paid to outside counsel and experts; and

9 (b) Costs and legal fees for defending ValueClick and certain of
10 the Defendants against private securities class action litigation arising from illegal
11 and improper conduct alleged herein.

12 71. Plaintiff has not made any demand on the shareholders of ValueClick
13 to institute this action since demand on the shareholders would be a futile
14 endeavor for the following reasons:

15 (a) ValueClick is a publicly held company with millions of shares
16 outstanding, and thousands of shareholders;

17 (b) Making demand on such a number of shareholders would be
18 impossible for Plaintiff, who has no way of finding out the names, addresses or
19 phone numbers of all the shareholders; and

20 (c) Making demand on all shareholders would force Plaintiff to
21 incur huge expenses, assuming all shareholders could be individually identified.

22 **COUNT I**
23 **AGAINST ALL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY**
24 **FOR DISSEMINATING FALSE AND MISLEADING INFORMATION**

25 72. Plaintiff incorporates by reference and realleges each and every
26 allegation set forth above, as though fully set forth herein.

27 73. As alleged in detail herein, each of the Defendants had a duty to
28 ensure that ValueClick disseminated accurate, truthful and complete information
to its shareholders.

COUNT III
AGAINST ALL DEFENDANTS FOR UNJUST ENRICHMEN

82. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

83. By their wrongful acts and omissions, the Defendants were unjustly enriched at the expense of and to the detriment of ValueClick.

84. Plaintiff, as a shareholder and representative of ValueClick, seeks restitution from these Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these Defendants, and each of them, from their wrongful conduct and fiduciary breaches.

COUNT IV
AGAINST ALL DEFENDANTS FOR ABUSE OF CONTROL

85. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

86. Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence ValueClick, for which they are legally responsible. In particular, Defendants abused their positions of authority by causing or allowing ValueClick to misrepresent material facts regarding its business.

87. As a direct and proximate result of Defendants' abuse of control, ValueClick has sustained significant damages.

88. As a result of the misconduct alleged herein, Defendants are liable to the Company.

89. Plaintiff, on behalf of ValueClick, has no adequate remedy at law.

COUNT V
AGAINST ALL DEFENDANTS FOR GROSS MISMANAGEMENT

90. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

91. Defendants had a duty to ValueClick and its shareholders to prudently supervise, manage and control the operations, business and internal financial accounting and disclosure controls of ValueClick.

92. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of ValueClick in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of ValueClick's affairs and in the use and preservation of ValueClick's assets.

93. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused ValueClick to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to ValueClick, thus breaching their duties to the Company. As a result, Defendants grossly mismanaged ValueClick.

COUNT VI
AGAINST ALL DEFENDANTS FOR WASTE OF CORPORATE ASSETS

94. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

95. As a result of the misconduct described above, and by failing to properly consider the interests of the Company and its public shareholders, Defendants have caused ValueClick to incur (and ValueClick may continue to

1 incur) significant legal liability and/or legal costs to defend itself as a result of
2 Defendants' unlawful actions.

3 96. As a result of this waste of corporate assets, Defendants are liable to
4 the Company.

5 97. Plaintiff, on behalf of ValueClick, has no adequate remedy at law.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment as follows:

8 A. Against all Defendants and in favor of the Company for the amount
9 of damages sustained by the Company as a result of Defendants' breaches of
10 fiduciary duties;

11 B. Directing ValueClick to take all necessary actions to reform and
12 improve its corporate governance and internal procedures to comply with
13 applicable laws and to protect the Company and its shareholders from a repeat of
14 the damaging events described herein, including, but not limited to, putting
15 forward for shareholder vote resolutions for amendments to the Company's By-
16 Laws or Articles of Incorporation and taking such other action as may be
17 necessary to place before shareholders for a vote a proposal to strengthen the
18 Board's supervision of operations and develop and implement procedures for
19 greater shareholder input into the policies and guidelines of the Board;

20 C. Awarding to ValueClick restitution from Defendants, and each of
21 them, and ordering disgorgement of all profits, benefits and other compensation
22 obtained by the Defendants;

23 D. Awarding to Plaintiff the costs and disbursements of the action,
24 including reasonable attorneys' fees, experts' fees, costs, and expenses; and

25 E. Granting such other and further relief as the Court deems just and
26 proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: December 6, 2013

GREEN & NOBLIN, P.C.

By: 

James Robert Noblin

Robert S. Green
700 Larkspur Landing Circle, Suite 275
Larkspur, CA 94939
Telephone: (415) 477-6700
Facsimile: (415) 477-6710

William B. Federman
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Email: wbf@federmanlaw.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NANCY JEAN HOLT, derivatively on behalf of VALUECLICK, INC.)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
DAVID S. BUZBY, JAMES A.)	
CROUTHAMEL, JOHN GIULIANI,)	
MARTIN HART, JAMES R. PETERS,)	
JEFFREY F. RAYPORT BRIAN A. SMITH)	
and JAMES ZARLEY,)	
)	
Defendants,)	
)	
and)	
)	
VALUECLICK, INC.,)	
)	
Nominal Defendant.)	

VERIFICATION AND AFFIDAVIT

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

I, Nancy Jean Holt, do hereby depose and say that:

1. I am and have been the holder of the common stock of ValueClick, continuously since prior to the wrongs complained of.

2. I have read the Complaint to be filed in the above-captioned action, and the facts alleged therein are true and correct to the best of my knowledge, information and belief.

3. I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this class action except for:

(a) such damages or other relief as the Court may award me as a member of the class;

(b) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of myself; or reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.


NANCY JEAN HOLT

SWORN TO AND SUBSCRIBED before me a Notary Public in the State and County so noted on December 4, 2013.




Notary Public, State of TEXAS

My Commission Expires: January 11, 2017

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Beverly Reid O'Connell and the assigned Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

2:13-cv-09024-BRO(JEMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

December 6, 2013

Date

By APEDRO
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☐ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

NANCY JEAN HOLT, derivatively on behalf of
VALUECLICK, INC.

Plaintiff(s)

v.

DAVID S. BUZBY, JAMES A. CROUTHAMEL, JOHN
GIULIANI, MARTIN HART, JAMES R. PETERS,
JEFFREY F. RAYPORT, BRIAN A. SMITH and
JAMES ZARLEY

Defendant(s)

and VALUECLICK, INC.,

Nominal Defendant.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DAVID S. BUZBY, JAMES A. CROUTHAMEL, JOHN GIULIANI, MARTIN HART,
JAMES R. PETERS, JEFFREY F. RAYPORT, BRIAN A. SMITH and JAMES ZARLEY
30699 RUSSELL RANCH ROAD, SUITE 250
WESTLAKE VILLAGE CA 91362

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert S. Green (State Bar No. 136183)
James Robert Noblin (State Bar No. 114442)
GREEN & NOBLIN, P.C.
700 Larkspur Landing Circle, Suite 275
Larkspur, CA 94939
(415) 477-6700

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:

DEC - 6 2013

CLERK OF COURT

ANDRES PEDRO

Signature of Clerk or Deputy Clerk

1202

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode **with** *(name)* _____
_____, a person of suitable age and **discretion** who resides there,
on *(date)* _____, and mailed a copy to the individual's last **known** address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

NANCY JEAN HOLT, derivatively on behalf of VALUECLICK, INC.

DEFENDANTS (Check box if you are representing yourself ☐)

DAVID S. BUZBY, JAMES A. CROUTHAMEL, JOHN GIULIANI, MARTIN HART, JAMES R. PETERS, JEFFREY F. RAYPORT, BRIAN A. SMITH and JAMES ZARLEY,

(b) County of Residence of First Listed Plaintiff Harris, TX

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Los Angeles, CA

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

James Robert Noblin (State Bar No. 114442) (415) 477-6700
GREEN & NOBLIN, P.C.
700 Larkspur Landing Circle, Suite 275
Larkspur, CA 94939

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.)☐ 1. U.S. Government Plaintiff☐ 3. Federal Question (U.S. Government Not a Party)☐ 2. U.S. Government Defendant☒ 4. Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

Citizen of This State

PTF

DEF

☐ 1☒ 1

Incorporated or Principal Place of Business in this State

PTF

DEF

☐ 4☐ 4

Citizen of Another State

☒ 2☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5☐ 5

Citizen or Subject of a Foreign Country

☐ 3☐ 3

Foreign Nation

☐ 6☐ 6**IV. ORIGIN** (Place an X in one box only.)☒ 1. Original Proceeding☐ 2. Removed from State Court☐ 3. Remanded from Appellate Court☐ 4. Reinstated or Reopened☐ 5. Transferred from Another District (Specify)☐ 6. Multi-District Litigation**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION** under F.R.Cv.P. 23: ☒ Yes ☐ No ☐ **MONEY DEMANDED IN COMPLAINT:** \$**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Shareholder derivative action for breach of fiduciary duty and other claims. 28 USC § 332.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 369 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

CV-71 (11/13)

CIVIL COVER SHEET

Page 1 of 3

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A Los Angeles County	B Ventura, Santa Barbara, or San Luis Obispo Counties	C Orange County	D Riverside or San Bernardino Counties	E Outside the Central District of California	F Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in **this court** and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in **this court** that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): _____

DATE: December 6, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))